19 CV 012012

NORTH CAROLINA

WAKE COUNTY

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WAKE CO., C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 19 CVS _____

ELK SOLAR, LLC; VINTAGE SOLAR 2, LLC; WOODINGTON SOLAR, LLC; AIRPORT SOLAR, LLC; BREWINGTON SOLAR, LLC; GRAY FOX SOLAR, LLC,

Plaintiffs,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

COMPLAINT

Plaintiffs Elk Solar, LLC ("Elk Solar"), Vintage Solar 2, LLC ("Vintage Solar"), Woodington Solar, LLC ("Woodington Solar"), Airport Solar, LLC ("Airport Solar"), Brewington Solar, LLC ("Brewington Solar"), and Gray Fox Solar, LLC ("Gray Fox Solar"), complaining of Defendant Duke Energy Progress, LLC ("DEP"), allege as follows:

INTRODUCTION

Plaintiffs seek injunctive and declaratory relief and damages for breach of contract against DEP arising from a settlement agreement entered into by DEP and its sister utility, Duke Energy Carolinas, LLC ("DEC") (collectively, the "Duke Utilities") with various solar developers, including the Plaintiffs. DEP, together with DEC, has engaged in a course of conduct that has substantially delayed and inhibited the ability of solar projects such as Plaintiffs' to exercise their federally granted right to connect to the electric grid and provide additional generation capacity to incumbent

utilities, who are monopoly providers of retail electric service. DEP's entry into the settlement agreement was precipitated by this course of conduct, and DEP's failure to abide by the terms of the agreement has resulted in additional delay and frustration of Plaintiffs' rights which has resulted in continuing economic harm and damage to the Plaintiffs.

PARTIES AND JURISDICTION

1. Plaintiff Elk Solar is a North Carolina limited liability company with a principal office located in Charlotte, North Carolina. Elk Solar is the owner of solar project in Hoke County, North Carolina, seeking to interconnect with the electric grid operated by DEP. Elk Solar has the legal authority to bring this claim.

2. Plaintiff Vintage Solar is a North Carolina limited liability company with a principal office located in Charlotte, North Carolina. Vintage Solar is the owner of a solar project in Anson County, North Carolina, seeking to interconnect with the electric grid operated by DEP. Vintage Solar has the legal authority to bring this claim.

3. Plaintiff Woodington Solar is a North Carolina limited liability company with a principal office located in Charlotte, North Carolina. Woodington Solar is the owner of a solar project in Robeson County, North Carolina, seeking to interconnect with the electric grid operated by DEP. Woodington Solar has the legal authority to bring this claim.

4. Plaintiff Airport Solar is a North Carolina limited liability company with a principal office located in Charlotte, North Carolina. Airport Solar is the owner of

a solar project in Anson County, North Carolina, seeking to interconnect with the electric grid operated by DEP. Airport Solar has the legal authority to bring this claim.

5. Plaintiff Brewington Solar is a North Carolina limited liability company with a principal office located in Charlotte, North Carolina. Brewington Solar is the owner of a solar project in Cumberland County, North Carolina, seeking to interconnect with the electric grid operated by DEP. Brewington Solar has the legal authority to bring this claim.

6. Plaintiff Gray Fox Solar is a North Carolina limited liability company with a principal office located in Charlotte, North Carolina. Gray Fox Solar is the owner of a solar project in Robeson County, North Carolina, seeking to interconnect with the electric grid operated by DEP. Gray Fox Solar has the legal authority to bring this claim.

7. Defendant DEP is a North Carolina limited liability company with a principal office in Raleigh, North Carolina. DEP is an electric public utility operating under the laws of the State of North Carolina for the purposes of generating, transmitting, and distributing electricity in its service territory as a monopoly provider of retail electric service. DEP is a subsidiary of Duke Energy Corporation, which is a publicly traded corporation that is one of the largest energy holding companies in the United States.

8. This Court has jurisdiction over the subject matter and parties, and Wake County is a proper venue.

9. Jurisdiction and venue are proper pursuant to Chapter 1 and Chapter 7A of the North Carolina General Statutes. This action has been filed within all applicable statutes of limitation and repose.

10. The amount in controversy is sufficient to satisfy the requirements of G.S. § 7A-45.4(a)(9).

FACTS

Statutory and Regulatory Background

11. The Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601, *et seq.* (as amended, "PURPA"), was enacted in part to encourage the development and construction of independently owned renewable sources of electric generation.

12. One of the ways PURPA seeks to accomplish its goals is through recognition of a special class of generating facilities that receives preferential regulatory treatment. Specifically, PURPA requires regulated utilities such as the Duke Utilities to purchase the energy produced by certain "qualifying facilities" ("QFs")—which include small power producers of 80 MW or less whose primary energy source is a renewable resource such as solar, biomass, waste, or geothermal—at rates established by the state public service commission (here the North Carolina Utilities Commission ("NCUC")) based on the utility's costs that are avoided by the purchase of the additional generation ("avoided costs").

13. A QF may effectuate its rights under PURPA by certifying with the Federal Energy Regulatory Authority ("FERC") as a QF, complying with state law requirements relating to the construction of generation capacity, and establishing a

"legally enforceable obligation" to sell its energy and capacity to the utility. This federal right is mirrored by a subsequently enacted provision of state law requiring electric public utilities to purchase the power produced by "small power producers" at avoided cost rates. *See* G.S. § 62-156.

14. This right of QFs to interconnect and sell energy and capacity at "avoided cost" rates to the incumbent utilities is perceived by these utilities as in conflict with the utilities' interest in utilizing self-owned generation to provide electricity to their retail customers. Production from each QF effectively competes with the use of energy derived from new and existing assets owned by the regulated utility. These factors—combined with the fact that the utilities control access to their grid—create incentives and opportunities for the utilities to discourage, delay, or obstruct such interconnection.

15. This collision of interests is particularly acute in North Carolina as, due to several policies established by the General Assembly to encourage the use of renewable sources of energy, as well as the NCUC's policies implementing PURPA, the state has been a nationwide leader in the development of renewable energy, particularly solar.

16. Given the impossibility of financing the construction of speculative renewable energy projects in a regulated market like North Carolina, a QF's rights to interconnect with and sell energy and capacity to the incumbent utility must be established in advance of the construction of the project. The relevant state commission sets the guidelines by which these rights are established.

17. In North Carolina, the NCUC has established via a rulemaking proceeding interconnection standards that govern the process by which a QF applies for interconnection and the process by which the Duke Utilities are to examine such applications (the "Interconnection Procedures").

18. The Interconnection Procedures set forth varying requirements depending on the type and size of facility for which interconnection is sought, but generally provide the form of applications, timelines for the Duke Utilities' processing of applications, content requirements for the Duke Utilities' analysis of interconnection requests, and the form of agreements to be used by interconnection applicants and the Duke Utilities during the processing of applications and ultimately when an interconnection is approved.

19. Applications for interconnection are placed in the Duke Utilities' respective "interconnection queues," and are processed with priority given generally to earlier filed applications.

20. The processing of applications in the interconnection queues has proceeded substantially more slowly than is required by the timelines in the Interconnection Procedures, resulting in a well-documented backlog in the queues.

21. DEP has failed to meet the interconnection study timelines within the Interconnection Procedures for every one of the projects at issue in this Complaint.

22. This backlog has been exacerbated by the fact that, since 2016, the Duke Utilities have unilaterally implemented a number of new technical tests or screens to evaluate the suitability of proposed solar QF projects for interconnection while, at the

same time, they have restricted use of previously allowed interconnection options based upon the Duke Utilities' changing opinion of what constitutes "good utility practice."

23. Implementation of the new tests or screens was part of a concerted effort by the Duke Utilities to delay and block the development of PURPA QFs in their service territories. The tests and screens have resulted in protracted delays in processing interconnection applications, amounting in some cases to a moratorium on new interconnections, and in the cancellation of many QFs that could not be developed because of these tests and screens.

24. The introduction of these new screens has slowed the processing of interconnection applications of the Plaintiffs and others, and it has disqualified or rendered uneconomic a large number of proposed solar QFs in the interconnection queue.

25. In June 2016, the Duke Utilities unilaterally and without prior notice to QF developers announced their intention to apply, for the first time, a so-called "circuit stiffness" screen in studying solar interconnections. The circuit stiffness screen was adopted by the Duke Utilities in an effort to slow and limit the interconnection of QFs in their service territories.

26. Many QF developers issued notices of dispute ("NODs") to Duke under the NCUC's interconnection procedures alleging, among other things, that the circuit stiffness screen was not technically justified and could not lawfully be imposed on projects for which system impact studies had already been completed.

27. In August of 2016, the Duke Utilities and QF developers who had issued these NODs entered into a settlement agreement resolving the circuit stiffness disputes. In addition, the settlement agreement provided that the Duke Utilities and settling QF developers would enter into "Solar 2.0 Discussions" in an effort to seek consensus about potential policy changes relating to solar development in the Duke Utilities' North Carolina service territories.

28. The Solar 2.0 Discussions led to lengthy negotiations between the Duke Utilities and the QF development community about major changes to the implementation of PURPA in North Carolina. Having experienced the significant delays that the Duke Utilities could, in their efforts to frustrate QF development, impose on their projects through measures like the circuit stiffness screen, QF developers were prepared to accept significant changes to PURPA implementation in order to achieve timelier and more certain project development.

29. The result of those negotiations was House Bill 589, N.C. Session Law 2017-192, enacted by the North Carolina General Assembly in July 2017. House Bill 589 represented a negotiated compromise between the Duke Utilities and independent power producers seeking to develop QFs in North Carolina.

30. Among other changes, House Bill 589 made it harder to develop QFs. Primary motivations for the QF development community's acquiescence to these changes were the expectation that it would curtail the Duke Utilities' unilateral imposition of new interconnection screens designed to thwart interconnection, coupled with the inclusion of a provision "grandfathering" certain existing projects so

that they would remain eligible for the rate schedules and power purchase agreement terms and conditions approved by the NCUC in Docket No. E-100, Sub 140 (referred to as "Sub 140 QFs"), which were scheduled to expire if the project was not in service by September 10, 2018.

31. At the time, a large percentage of QFs under development were not expected to be placed in service by that deadline—in large part because of the significant interconnection delays resulting from the Duke Utilities' imposition of new interconnection screens. Under this grandfathered status, projects would remain eligible for Sub 140 rates even if they were not operational by September 10, 2018, albeit their power purchase agreement term would be deemed to commence on that date and would end 15 years thereafter.

32. The QF developers unequivocally communicated to the Duke Utilities on multiple occasions that the protection of the Sub 140 QFs was essential to their support of H.B. 589 and the considerable benefits that it provided to the Duke Utilities to the detriment of QF developers. Based on the language of the bill, and following discussions with the Duke Utilities leading to the bill, the QF development community reasonably believed that the Duke Utilities would process the interconnection requests for the affected Sub 140 QFs without further obstruction.

The Duke Utilities' Actions to Undermine H.B. 589

33. In September 2017, the Duke Utilities unilaterally and unexpectedly unveiled their most aggressive set of new interconnection screens to date, referred to as the "Method of Service Guidelines" ("Duke Guidelines") which included new

limitations on interconnection to the grid. The effect of the Duke Guidelines, if implemented as originally intended by the Duke Utilities, would have been to prevent a substantial percentage of the QFs grandfathered by House Bill 589 from being built, thus drastically undermining the key benefit that QF developers had received in exchange for supporting House Bill 589.

34. Among the changes sought to be imposed by the new Duke Guidelines was a change in its determination of the nameplate capacity of substation transformers in DEP service territory. The change did not reflect any actual physical change to the substation transformers, but rather reflected the Duke Utilities' choice to use a lower nameplate capacity rating than had been used historically in the DEP service territory.

35. This unilateral attempt to redefine nameplate capacity would have dramatically reduced the number of Sub 140 QFs that could be interconnected to the grid, despite House Bill 589's clear intent to preserve the eligibility of such projects for interconnection and QF status. *See* N.C. Session Law 2017-192, § 1(c).

The Settlement Agreement

36. After a number of solar QF developers issued NODs to challenge the Duke Utilities' nameplate capacity change and other changes proposed in the Duke Guidelines, the Duke Utilities and certain developers entered into yet another round of negotiations to settle their disputes. On January 30, 2018, the Duke Utilities and certain developers, including the Plaintiffs, entered into a Settlement Agreement that significantly modified the way in which the Duke Guidelines would apply to projects

eligible for grandfathering under House Bill 589 ("Covered Projects"). Certain Covered Projects that did not exceed 133% of the base nameplate rating of the associated substation transformer are also referred to as "exempt" Covered Projects because they were exempt from Duke Utilities' change in the determination of the nameplate capacity for such substation transformers.

37. The developers involved in reaching the Settlement Agreement sought to prevent the Duke Utilities from further slowing or preventing the interconnection of the Covered Projects by the continued addition of new evaluation screens, studies, and practices. For any Covered Project Interconnection Request, the Duke Utilities agreed in the Settlement Agreement that they would process applications and assign the cost of Interconnection Facilities and Upgrades based upon the current study criteria and methods as of January 30, 2018.

38. The Duke Utilities further agreed:

> (1) not to materially change the Method of Service Guidelines or any other currently effective interconnection policies and practices applied to studying the Covered Projects, including, but not limited to, the Duke Utilities' current practice of offering multiple mitigation options at various MWAC sizes and costs, and (2) not to introduce any new interconnection policies, screens, or practices applied to studying such Covered Projects, unless required by a change in applicable law or ordered by the [NCUC].

Settlement Agreement, § 2(b).

39. The intent of this provision of the Settlement Agreement was to give QF developers certainty by preventing the Duke Utilities from continuing to add new criteria by which they would evaluate the Covered Projects. It was, further, an effort to avoid further controversy about new interconnection screens by including

provisions prohibiting the Duke Utilities from modifying their interconnection policies or practices with regard to the Covered Projects.

40. Plaintiffs are each parties to the Settlement Agreement with the legal right to sue under the agreement. In the alternative, Plaintiffs are intended beneficiaries of the Settlement Agreement with the legal right to sue under the agreement.

Projects Proposed by Plaintiffs

41. The Plaintiffs are entities that develop, construct and own solar photovoltaic QFs. Each of the Plaintiffs have proposed solar projects that are "Covered Projects" under the Settlement Agreement, and are further protected under the Settlement Agreement as "exempt" Covered Projects.

42. Elk Solar proposes to construct a solar generating facility, with up to 5 MW in capacity, to be interconnected with the DEP distribution system (the "Elk Solar Project"). The Elk Solar Project has been assigned queue no. NC2016-00010 by DEP and is a "Covered Project" under the Settlement Agreement. Elk Solar has properly established a legally enforceable obligation under PURPA for DEP to purchase its power under Sub 140 NCUC-approved rates.

43. Vintage Solar proposes to build a solar generating facility, with up to 4.992 MW in capacity, to be interconnected with the DEP distribution system (the "Vintage Solar Project"). The Vintage Solar Project has been assigned queue no. NC2016-02897 and is a "Covered Project" under the Settlement Agreement. Vintage

Solar has properly established a legally enforceable obligation under PURPA for DEP to purchase its power under Sub 140 NCUC- approved rates.

44. Woodington Solar proposes to build solar generating facility, with up to 4.992 MW in capacity, to be interconnected with the DEP distribution system (the "Woodington Solar Project"). The Woodington Solar Project has been assigned queue no. NC2016-02885 and is a "Covered Project" under the Settlement Agreement. Woodington Solar has properly established a legally enforceable obligation under PURPA for DEP to purchase its power under Sub 140 NCUC-approved rates.

45. Airport Solar proposes to build a solar generating facility, with up to 4.992 MW in capacity, to be interconnected with the DEP distribution system (the "Airport Solar Project"). The Airport Solar Project has been assigned queue no. NC2016-02928 and is a "Covered Project" under the Settlement Agreement. Airport Solar has properly established a legally enforceable obligation under PURPA for DEP to purchase its power under Sub 140 NCUC-approved rates.

46. Brewington Solar proposes to build a solar generating facility, with up to 4.992 MW in capacity, to be interconnected with the DEP distribution system (the "Brewington Solar Project"). The Brewington Solar Project has been assigned queue no. NC2016-02917 and is a "Covered Project" under the Settlement Agreement. Brewington Solar has properly established a legally enforceable obligation under PURPA for DEP to purchase its power under Sub 140 NCUC-approved rates.

47. Gray Fox Solar proposes to build a solar generating facility, with up to 4.992 MW in capacity, to be interconnected with the DEP distribution system (the

"Gray Fox Solar Project"). The Gray Fox Solar Project has been assigned queue no. NC2016-00028 and is a "Covered Project" under the Settlement Agreement. Gray Fox Solar has properly established a legally enforceable obligation under PURPA for DEP to purchase its power under Sub 140 NCUC-approved rates.

48. In summary, each of the projects referenced above proposes to interconnect with DEP's distribution system; is a Sub 140 QF eligible for "grandfathered" status under House Bill 589; and is a "Covered Project" under the Settlement Agreement.

Duke Institutes New Transmission Impacts Screens, Policies or Practices with Respect to Plaintiffs' Covered Projects

49. An interconnection customer may request interconnection to the Duke Utilities transmission system or to the distribution system. The Duke Utilities' transmission system consists of high-voltage lines, typically rated at 44 kV or higher, that carry power from generation facilities to the distribution system. The Duke Utilities' distribution system consists of relatively low-voltage lines, typically 12 to 24 kV, that carry power from distribution substations to end users, e.g., retail customers.

50. Distributed generation projects that seek to connect to the Duke Utilities' distribution system are referred to as "distribution projects" and are managed separately from projects seeking interconnection to the transmission system.

51. The Interconnection Procedures in effect on January 30, 2018, when the Settlement Agreement became effective, did not require the study of the potential

transmission system impacts of distribution projects. Consistent with this fact, before January 30, 2018, DEP analyzed the potential distribution system impacts of distribution projects, but, upon information and belief, did not review such projects for potential transmission system impacts.

52. Upon information and belief, on and before January 30, 2018, DEP never documented a transmission impacts analysis for any distribution project, and no DEP system impact study analyzed the transmission impacts of a distribution project.

53. Shortly after the Settlement Agreement was executed, in or about April 2018, DEP changed course and applied a new approach to studying the transmission impacts of distribution projects.

54. First, for the first time, DEP began analyzing transmission impacts of all distribution projects.

55. Second, DEP conducted this analysis by aggregating the potential impacts of known and potential generation sources on a system-wide basis.

56. Under this new aggregate impact analysis, DEP unilaterally chose to combine all of the active projects with interconnection requests in its distribution and transmission queues as of the end of 2016 without regard to whether such projects were protected under House Bill 589 or under the Settlement Agreement.

57. Applying these new policies, approximately two months after entering into the Settlement Agreement, DEP notified Vintage Solar, Woodington Solar, Airport Solar, Brewington Solar, Elk Solar, and Gray Fox Solar that each of their

respective projects was impacted by the new analysis of potential transmission system impacts. Each of these projects is an exempt Covered Project under the Settlement Agreement.

58. DEP has declared that these projects now cannot proceed to interconnection without the construction of transmission system upgrades.

59. The transmission impacts analyses, policies, practices, and screens applied to the Vintage Solar, Woodington Solar, Airport Solar, Brewington Solar, Elk Solar, and Gray Fox Solar projects are new policies, practices, or screens within the meaning of Section 2(b) of the Settlement Agreement. There has been no change in law or order of the Commission requiring DEP to introduce such policies, practices or screens.

60. Upon information and belief, prior to the Settlement Agreement, no distribution project in the DEP territory had been assigned transmission system network upgrade costs as a condition of interconnection utilizing this system-wide study approach.

61. Upon information and belief, if DEP had followed its previous practice with regard to the Vintage Solar, Woodington Solar, Airport Solar, Brewington Solar, Elk Solar, and Gray Fox Solar Projects, these Projects would not be delayed by a transmission impacts analysis and would not be dependent on additional transmission system upgrades.

62. Based on the mere two months between DEP signing the Settlement Agreement and imposing the new policies, practices, or screens, it is apparent that DEP neither negotiated, nor executed, the Settlement Agreement in good faith.

63. To the contrary, upon information and belief, both DEP and DEC knew before they executed the Settlement Agreement that DEP intended to adopt a new approach to studying the transmission impacts of exempt Covered Projects, notwithstanding the terms of the agreement. DEP never disclosed its intention during negotiations leading up to the Settlement Agreement.

64. DEP's deceptive and misleading conduct during these negotiations has robbed Plaintiffs of the benefit of the bargain they struck and violates DEP's implied duty of good faith and fair dealing.

65. DEP continues to violate the Interconnection Procedures by not completing the final facilities studies for each project required under the Interconnection Procedures to obtain an interconnection agreement. Plaintiffs find themselves in a moratorium imposed by DEP, contrary to the NCUC's approved Interconnection Procedures, and in breach of the Settlement Agreement.

Inadequacy of Administrative Remedies

66. The NCUC has jurisdiction over the practices of regulated utilities under its supervision, including DEP's interconnection practices.

67. However, there are no administrative remedies that Plaintiffs are required to exhaust before proceeding on a breach of contract claim against DEP in this Court with respect to DEP's breach of the Settlement Agreement.

68. Furthermore, in the alternative, any administrative remedies would be futile and inadequate to provide the relief sought by Plaintiffs.

69. The NCUC is not a party to the Settlement Agreement; it lacks authority to award damages to Plaintiffs resulting from DEP's breaches of the Settlement Agreement; and it lacks authority to empanel a jury to ensure Plaintiffs' right to trial by jury regarding their damages resulting from DEP's breaches of contract.

70. For these reasons, the NCUC cannot provide the remedies (damages) or the procedure necessary (trial by jury) for Plaintiffs to obtain the remedies they seek, and it would be futile, pointless and inadequate to exhaust any administrative relief that could be afforded by the NCUC relating to DEP's breach of contract.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

71. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

72. The Settlement Agreement prohibits DEP from materially changing any of its interconnection policies and practices and prohibits DEP from introducing or applying any new interconnection policies, screens, or practices to any of Plaintiffs' projects.

73. DEP has materially changed its interconnection policies and practices, and has imposed new interconnection policies, screens, or practices and applied these new policies, screens, or practices to Plaintiffs' projects, including the new transmission impacts study methodology.

74. DEP's introduction and application after January 30, 2018 of materially different and or new interconnection policies, screens, or practices, including the new transmission impacts study methodology, breach the terms of the Settlement Agreement.

75. This breach has resulted in substantial harm to each of Plaintiffs' projects. This harm includes, among other things, loss of revenue as the projects are being held in abeyance in a de facto moratorium by DEP, the inability to recover sunk costs that have already been spent in furtherance of the projects, and the loss of the benefits of the "grandfathered" status afforded by House Bill 589.

76. As a result of DEP's breaches of the Settlement Agreement, each of the Plaintiffs has incurred damages in excess of $25,000, in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Declaratory and Injunctive Relief)

77. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

78. Any change to DEP's Method of Service Guidelines or any other interconnection policies or practices, and any new interconnection policy, screen, or practice implemented on or after January 30, 2018, that has the effect of delaying, increasing the cost of, or precluding the interconnection of a Covered Project is a material change from DEP's prior practices.

79. DEP's new transmission impacts analysis policies, practices, and screens have delayed, increased the cost of, and precluded the Plaintiffs' Covered Projects from interconnecting.

80. Plaintiffs seek a declaration under G.S. § 1-253 *et seq.* that the transmission impacts policies, practices, and screens implemented by DEP on or after January 30, 2018, including the aggregate transmission impacts analysis, violate the Settlement Agreement.

81. Plaintiffs further seek an order enjoining DEP from employing its new transmission impacts analyses, policies, practices, or screens, or any other policies, practices, or screens to Covered Projects under the Settlement Agreement where such practices were not implemented and used prior to January 30, 2018, unless required by a change in applicable law or ordered by the North Carolina Utilities Commission.

82. Plaintiffs further seek an order requiring DEP to complete the remaining studies of Plaintiff's projects in accordance with the timelines established under the Interconnection Procedures and subject to economically reasonable mitigation options (if required) that are consistent with Good Utility Practices offered at the time of each respective application.

WHEREFORE, Plaintiffs respectfully pray that the Court enter an order:

1. Granting judgment in favor of Plaintiffs and against DEP, and awarding damages in an amount to be determined at trial;

2. Granting declaratory relief under G.S. § 1-253 *et seq.* to Plaintiffs and declaring that DEP's application to any Covered Project of any interconnection

practices not instituted prior to January 30, 2018—including but not limited to the new aggregate transmission impacts analysis—is in breach of the Settlement Agreement;

3. Enjoining DEP from applying to any Covered Project any interconnection practices not instituted prior to January 30, 2018—including but not limited to the new aggregate transmission impacts analysis;

4. Enjoining DEP to complete the remaining studies as soon as possible but no later than the timelines outlined in the Interconnection Procedures.

5. Allowing jury trial on all issues so triable; and

6. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted, this 30th day of August, 2019.

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

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